IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3475 OF 2005

Shri Ashok Shantilal Patni : Petitioner
(Third Party)

V/s.

Baburao Tukaram Gite & Ors. : Respondents
(No.1 Orig. Pltff.
Nos.2 to 10 Orig. Defts.)

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Mr.M.M.Sathaye for the petitioner.

Mr.G. Rameshwar for the respondents.

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CORAM : S.A. BOBDE, J.

June 30, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Rameshwar, learned counsel, appears and waives service of rule on behalf of the respondents.

Heard by consent.

2. The petitioner claims that he has entered into an agreement to purchase 1/4th share from one Eknath Bala who belonged to the same family. The petitioner has sued for specific performance of the contract under which he claims to have entered into an agreement to purchase 1/4th share

of Ekanath. The suit for partition of the family property of the respondents is pending in appeal. In that appeal, the petitioner applied for impleadment as a party. This application has been rejected. According to Mr.Sathaye, the learned counsel for the petitioner, this impleadment in the partition suit of the respondents is necessary because the petitioner's agreement to purchase 1/4th share from Eknath Bala will be affected. There is no merit in this submission for two reasons, firstly, because the plaintiff's suit for specific performance is still pending. There is no decision that the petitioner has a right in 1/4th share. Secondly, the petitioner claims to have purchased an undivided 1/4th share.

3. Mr.Sathaye, learned counsel for the petitioner, relied on an order of this Court in Appeal From Order No.750 of 2003 (Shantabai Eknath Gite & Ors. v. Shri Ashok Shantilal Patani) arising out of the petitioner's suit for specific performance of the contract in which this Court has restrained the defendants therein, viz., Eknath Bala and other members and his heirs from creating any third-party interests in respect of 1/4th undivided share of the deceased Eknath and in the suit property. This, to my mind, adequately protects the petitioner's interests. There is no merit in the petition which is hereby dismissed.

Sd/-

S.A. BOBDE, J.